

IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH,
MUMBAI

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 3601/MUM/2024
(A.Y. 2017-18)

Sunanda Surendra Shetty 7d, Aditya Apartments, SVP Nagar, Andheri West, Mumbai-400053	v/s. बनाम	NFAC, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAYPS3486N		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Narayan Atal
Respondent by :	Shri Dharamveer D. Yadav

Date of Hearing	08.10.2024
Date of Pronouncement	11.11.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals),/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 30.04.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2017-18.

2. The assessee has raised following grounds of appeal:

"1. THE LD. ASSESSING OFFICER HAS ERRED ON THE FACTS AS WELL AS ON THE LAW WHILE PASSING THE IMPUGNED ORDER BY IGNORING THE FACT THAT SECTION 69A IS NOT APPLICABLE TO THE APPELLANT:

1.1 At the outset, the Appellant would like to reproduce section 69A of the Income-tax Act 1961 as under:

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

On perusal of aforesaid definition, it can be said that in order to attract section 69A of the Act, following conditions which are essentials should be established:

- a) The assessee must be found to be the owner:
- b) He must be the owner of any money, bullion, jewellery or other valuable articles:
- c) The said articles are not recorded in the books of account, if any maintained;
- d) The assessee is unable to offer an explanation regarding the nature and the source of acquiring the articles in question; or

The explanation offered is found to be not satisfactory in the opinion of the Assessing Officer;

If the aforesaid conditions are satisfied, then, the value of the bullion, jewellery or other valuable articles may be deemed to be the income of the financial year in which the assessee is found to be the owner;

As per language of section, Section 69A can be invoked only when the Appellant has not recorded such money in the books of accounts and offers no explanation or unsatisfactory explanation. Both the condition given in point no c and d are cumulative and satisfaction of either of condition does not automatically triggers rigours of section 69A.

In other words, it can be said that when the Appellant has recorded such money in his books of accounts then no explanation is required to be offered for the purpose of section 69A. Addition under section 69A can be made only when such money is not recoded in the books of accounts and not offered satisfactory reply.

1.2 In the instant case, the Appellant had submitted detailed explanation vide letter dated 10.07.2021 alongwith bank statement and ledger of Mr. Ashok Soni.

1.3 As per the aforesaid letter, it was submitted before the Assessing Officer that the receipt of Rs. 20,00,000 from Mr. Ashok Soni towards sale of Gold



Watch, on approval basis and repayment of said amount Rs. 20,00,000 to Mr. Ashok Soni upon return of the Gold Watch is forming part of books of accounts (reflecting in ledger) and also reflecting in Appellant's bank statement. Thus, the essential conditions of section 69A of the Act are not being fulfilled and accordingly, the Impugned Order is bad in law and should be set aside.

Hence, Appeal.

2. THE LD. ASSESSING OFFICER HAS ERRED ON THE FACTS AS WELL AS ON THE LAW WHILE PASSING THE IMPUGNED ORDER BY NOT CONSIDERING THE SUBMISSIONS OF THE APPELLANT:

2.1 The Appellant hereby submits that Impugned Order passed by the Ld. Assessing Officer is erroneous and bad in law, should be aside as the order was passed by him without considering the submissions of the Appellant.

2.2 In the impugned Order, he had just mentioned that reply was not satisfactory although the Appellant had submitted the ledger of Mr. Ashok Soni and bank statement evidencing the transaction.

2.3 However, the said submissions were rejected with the mindset that the Appellant has chosen to camouflage the truth and substance of the transaction. The submissions of the Appellant were not considered by just stating in the order that in the absence of satisfactory explanation and evidentiary documents, the amount is added to the total income. However, why the said explanation was not satisfactory is not mentioned in the Impugned Order.

2.4 Thus, the Impugned Order is passed with the pre-determined mindset of rejecting the submissions of the Appellant without any justified basis and accordingly, the Impugned Order is bad in law and should be set aside.”

3. The brief facts of the case are that the assessee had filed her return declaring income of Rs. 6,91,093/-. Subsequently, a notice u/s 148 was issued on 30.03.2021, in view of information received from the AO of one Shri Ashok Keshavlal Soni, who had deposited cash of Rs. 21,22,000/- during the demonetization period, out of which Rs. 20,00,000/- was transferred on the same date to the assessee. The assessee's explanation regarding sale of a gold watch to Ashok Keshavlal Soni was not found to be genuine by the AO, and he,



therefore, made an addition of Rs 20,00,000/- u/s 69A r.w.s. 115BBE of the Act in respect of this amount.

4. Aggrieved with the said order, the assessee filed an appeal before Ld. CIT(A). Notices were issued to the assessee by the office of the Ld. CIT(A) on 12.06.2023, 10.04.2024 & 18.04.2024. Since there was no response from the assessee, the Ld. CIT(A) dismissed the appeal of the assessee.

5. Since the order of the Ld. CIT(A) has been passed exparte, we deem it appropriate to restore the matter to the file of Ld. CIT(A) for fresh adjudication after giving due opportunity to the assessee. The assessee is also directed to cooperate and furnish requisite details before the Ld. CIT(A).

6. In the result, the appeal of the assessee is allowed for statistical purposes.
Order pronounced in the open court on 11.11.2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date

11.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT



ITA No. 3601/Mum/2024
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4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

